



## Office of the Attorney General

State of Texas

December 22, 1992

DAN MORALES

ATTORNEY GENERAL

Ms. Jill Stephens  
Benefits Analyst  
City of Carrollton  
Department of Human Resources  
P. O. Box 110535  
Austin, Texas 75011-0535

OR92-554

Dear Ms. Stephens:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17089.

The City of Carrollton (the "city") has received a request for documents relating to the city's solicitation of bids for an employee assistance provider. Specifically, the requestor is seeking "a copy of Corp Health's proposal submitted to the City of Carrollton." You assert that "CORPHEALTH is seeking to prevent disclosure [of the bid information] as trade secret." In support of this is CORPHEALTH's memorandum to the city, which states that its "materials submitted with [their] response to [the city's] proposal do fall under the definition of trade secret material as listed in section 3(a) of the Open Records Act."

Section 3(a)(10) protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.<sup>1</sup> The Texas Supreme Court has adopted the definition of "trade secret" from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is  
used in one's business, and which gives him an opportunity to obtain

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<sup>1</sup>Neither the city nor CORPHEALTH asserts that the requested information is excepted from required public disclosure under the second branch of the section 3(a)(10) exception. Commercial or financial information is excepted under section 3(a)(10) only if it is privileged or confidential under the common or statutory law. Open Records Decision No. 592 (1991) at 9.

an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business . . . .* [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [Emphasis added.]

RESTATEMENT OF TORTS § 757, cmt. b (1939).

This office has previously held that if a governmental body takes no position with regard to the application of the "trade secrets" branch of section 3(a)(10) to requested information, we must accept a private party's claim for exception as valid under that branch if that party establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.<sup>2</sup> When neither the agency nor the company provides relevant information regarding factors necessary to make a 3(a)(10) claim, there is no basis to withhold the information under section 3(a)(10). See Open Records Decision No. 402 (1983).

We have examined the documents submitted to us for review and have considered the respondent's arguments. Although CORPHEALTH has addressed the six Restatement criteria, its arguments amount to little more than a conclusory determination that the proposal constitutes "trade secrets." We conclude, therefore, that neither the city nor CORPHEALTH has provided us with information sufficient to establish a *prima facie* case that information contained in their proposals constitutes "trade secrets." Furthermore, we are aware of no statute or judicial decision that makes any information contained in the proposal privileged or confidential. Accordingly, we conclude that

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<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

- (1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

CORPHEALTH's proposal may not be withheld under section 3(a)(10) of the Open Records Act and must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-554.

Yours very truly,

  
Rick Gilpin  
Assistant Attorney General  
Opinion Committee

RG/GCK/lmm

Ref.: ID# 17089

cc: Ms. Lynn McClimon, MSW-CSW  
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